



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

VALLEY REGIONAL OFFICE

Douglas W. Domenech  
Secretary of Natural Resources

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David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

### **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO AXALTA COATING SYSTEMS, LLC Registration No. 80992**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Axalta Coating Systems, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the Permit and applicable regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Axalta" means Axalta Coating Systems, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Axalta is a "person" within the meaning of Va. Code § 10.1-1300.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means Axalta's automotive paint manufacturing facility located at 7961 Winchester Road, Front Royal, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means Partial Compliance Evaluation by DEQ staff.
9. "Permit" means the State Operating Permit (SOP), which was issued under the Virginia Air Pollution Control Law and the Regulations to Axalta on January 4, 2013, as amended May 15, 2013.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Axalta owns and operates an automotive paint manufacturing facility located in Warren County, Virginia.
2. Axalta, previously DuPont Performance Coatings, LLC, is subject to a SOP dated January 4, 2013, as amended May 15, 2013, which superseded the SOP dated December 21, 2010.
3. DEQ staff performed a PCE of the Biennial Stack Test report received March 27, 2013 for stack testing conducted on January 17, 2013, and observed that the RTO destruction efficiency was reported to be 89.6% and that appropriate air flows were not taken into account during the testing.
4. Condition 12 of the SOP states that "The RTO shall maintain a destruction efficiency for VOC emissions of no less than 97.0 percent, calculated biennially during the testing as required by Condition 20.c."
5. Condition 45 of the SOP states that "A performance test shall be conducted for VOC emissions from the RTO between December 1, 2012 and June 30, 2013 to determine compliance with the destruction efficiency requirements contained in Condition 12 and to

establish appropriate operating parameter ranges for the RTO, including the minimum combustion zone temperature...”

6. On April 16, 2013, DEQ staff performed a PCE of the 2013 Miscellaneous Maintenance Air Emissions Report, which was received on April 3, 2013 and due on January 30, 2013.
7. Condition 23 of the SOP states that “.... Tracking results and the resultant facility wide average monthly emission rate shall be submitted to the DEQ no later than 30 days after each 12-month period, beginning with the effective date of this permit.”
8. On April 17, 2013, based on the review of the March 27, 2013 stack test report and the April 16, 2013 PCE, the Department issued NOV No. AVRO8674 to DuPont Performance Coatings, LLC (now Axalta) for the violations described in paragraphs C(3) through C(7) above.
9. On May 14, 2013, DEQ staff met with representatives of Axalta to discuss the NOV. Facility representatives stated that the late report was the result of a staffing change and that a new system had been put in place to ensure future reports will be submitted on time. The Facility plans to submit a permit application that will allow compliance with either a minimum destruction efficiency or a mass emissions limit for the RTO.
10. Based on the results of the March 27, 2013 stack test report and the April 16, 2013 PCE, the Board concludes that Axalta has violated Permit conditions 12 and 23 as described in paragraphs C(3) through C(7), above.
11. In order for Axalta to complete its return to compliance, DEQ staff and representatives of Axalta have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Axalta, and Axalta agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$2,438.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Axalta shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Axalta for good cause shown by Axalta, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Axalta admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Axalta consents to venue in the Circuit Court of the City of Richmond, Virginia for any civil action taken to enforce the terms of this Order.
5. Axalta declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Axalta to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Axalta shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Axalta shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Axalta shall notify the DEQ Regional Director verbally within 24 hours and in writing within three

business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Axalta intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Axalta. Nevertheless, Axalta agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Axalta has completed all of the requirements of the Order;
  - b. Axalta petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Axalta .

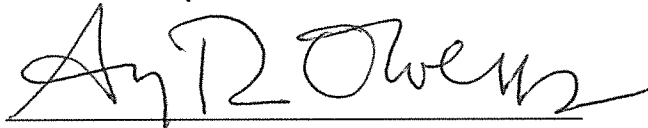
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Axalta from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Axalta and approved by the Department pursuant to this Order are incorporated into this Order.

Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Axalta certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Axalta to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Axalta.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Axalta voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8<sup>th</sup> day of July, 2013



Amy T. Owens, Regional Director  
Department of Environmental Quality

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Axalta Company voluntarily agrees to the issuance of this Order.

Date: 7/2/13 By: Louis J Papa, Plant Manager  
Name Title  
Axalta Coating Systems, LLC

Commonwealth of Virginia

City/County of Warren

The foregoing document was signed and acknowledged before me this 2<sup>nd</sup> day of  
July, 2013, by Louis J Papa who is  
Plant Manager of Axalta, on behalf of Axalta.

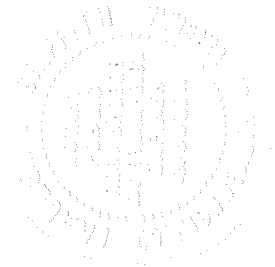
Fraulein D Griffith  
Notary Public

332928

Registration No.

My commission expires: 12/31/2017

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **Agreed Actions**

Accordingly, Axalta agrees to:

1. Within 45 days of the execution of this Order, submit to DEQ, an Air Permit Application (Form 7), to reflect the operational processes and associated equipment at the Facility. The Form 7 shall include language detailing operating parameters, production scenarios, Material Safety Data Sheets (MSDSs) and any other information related to air emissions at the Facility.
2. Within 90 days of the execution of this Order, supply sufficient information needed for the Department to evaluate the application and issue the permit.
3. Within 30 days after permit reissuance, perform stack testing of the RTO to demonstrate compliance with VOC emission limits and/or destruction efficiency. Submit a stack test protocol to DEQ 15 days prior to testing.
4. Within 45 days after completion of stack testing, submit to DEQ the stack test report.

### **Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the monthly reports, submitted to DEQ pursuant to this Consent Order, Axalta, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”



**DEQ Contact**

Unless otherwise specified in this Order, Axalta shall submit all requirements of Appendix A of this Order to:

Karen Hensley  
Enforcement Specialist Sr.  
VA DEQ –Valley Regional Office  
4411 Early Road  
P.O. Box 3000  
(540) 574-7821  
(540) 574-7878  
[karen.hensley@deq.virginia.gov](mailto:karen.hensley@deq.virginia.gov)